

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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JOHN SWANIGAN,

Petitioner,

v.

Case No. 06-CV-10775

JERI-ANN SHERRY,

Respondent.

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**ORDER GRANTING PETITIONER'S "MOTION TO LIFT STAY . . .,"  
DIRECTING CLERK OF COURT TO REOPEN CASE  
AND REQUIRING RESPONSIVE PLEADING**

Pending before the court is Petitioner John Swanigan's January 31, 2008, "Motion to Lift Stay on Petition for Writ of Habeas Corpus." Petitioner is a state inmate currently incarcerated at the Alger Maximum Correctional Facility in Munising, Michigan, pursuant to convictions for possession with intent to deliver between 225 and 650 grams of cocaine, possession with intent to deliver marijuana and possession of a firearm during the commission of a felony. He filed a petition for a writ of habeas corpus on February 21, 2006. Respondent filed a Motion to Dismiss on the ground that the petition contained an unexhausted claim. On January 30, 2007, the court issued an "Opinion and Order Denying Respondent's 'Motion to Dismiss,' Granting Petitioner's Request to Stay Habeas Corpus Proceedings and Administratively Closing Case," so that Petitioner could return to state court to exhaust his unexhausted claims. (1/30/07 Order.) The court directed that the petition would be held in abeyance provided that Petitioner (1) presented his claims in state court within sixty days of the court's order

staying the petition and (2) asked the court to lift the stay within sixty days of exhausting his state court remedies. (*Id.*)

In the pending motion, Petitioner states that he has now exhausted state court remedies by completing collateral review in state court. Petitioner states that he filed a motion for relief from judgment in the trial court within sixty days of the court's January 30, 2007 Order. (Pet.'s Br. at ii). The trial court denied the motion. See *People v. Swanigan*, No. 03-3372-01 slip op. (Wayne County Circuit Court Apr. 19, 2007). He filed an application for leave to appeal in the Michigan Court of Appeals, which was denied. See *People v. Swanigan*, No. 278457, slip op. (Mich. Ct. App. July 23, 2007). Petitioner then filed an application for leave to appeal in the Michigan Supreme Court, which denied leave to appeal on December 28, 2007. See *People v. Swanigan*, No. 134517, slip op. (Mich. Dec. 28, 2007).

Petitioner complied with the requirements set forth in the court's January 30, 2007 Order by filing a motion for relief in the trial court within sixty days of the court's Order and filing a motion to lift the stay within sixty days of exhausting his state court remedies. Accordingly,

IT IS ORDERED that Petitioner's "Motion to Lift Stay on Petition for Writ of Habeas Corpus" [Dkt. # 20] is GRANTED and the Clerk of Court is directed to REOPEN this matter.

IT IS FURTHER ORDERED that Respondent file an answer responding to the allegations of the petition in accordance with Rule 5, Rules Governing Section 2254 Cases, by **August 29, 2008**.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 4, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 4, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522